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PP

v.

SUZIE ADRINA AHMAD

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COURT OF APPEAL, PUTRAJAYA

GOPAL SRI RAM JCA

ARIFIN ZAKARIA JCA

NIK HASHIM JCA

[CRIMINAL APPEAL NO. S-05-74-2003]

C

11 JULY 2006

CRIMINAL LAW: *Dangerous Drugs Act 1952 - Section 39B(2) - Trafficking in dangerous drug - Appeal against acquittal - Whether a prima facie case of actual trafficking established - Whether trial judge misdirected himself in respect of evidence of chemist - Whether trial judge ought to have called for accused's defence to charge of trafficking - Dangerous Drugs Act 1952, ss. 37(g), 39B(1)(a), (2)*

CRIMINAL PROCEDURE: *Acquittal or discharge - Prima facie case not established - Accused acquitted on charge of trafficking in dangerous drugs - Whether a prima facie case of actual trafficking established - Whether trial judge misdirected himself in respect of chemist's evidence - Whether trial judge ought to have called for accused's defence to charge of trafficking*

EVIDENCE: *Expert evidence - Chemist - Whether trial judge misdirected himself in respect of chemist's evidence - Whether trial judge ought to have called for accused's defence to charge of trafficking irrespective of weight of drug in question*

This was an appeal by the Public Prosecutor against the acquittal of the respondent, who had been charged with an offence under s. 39B(2) of the Dangerous Drugs Act 1952 ('the Act'), at the close of the prosecution's case. In acquitting and discharging the respondent, the High Court held that the prosecution had not proved a *prima facie* case on two grounds. First, because it had failed to adduce sufficient evidence from which an inference that the respondent knew that the drug in question was in the box in which it was found, and second, because the chemist's evidence fell short of the requirements of s. 37(g) of the Act and hence did not go to prove the weight of the drug as stated in the charge but only the lesser weight of 2.332 grams.

Held (allowing the appeal and remitting the case to the court below with a direction to call for the defence)

Per Gopal Sri Ram JCA:

- (1) On the facts, firstly, the respondent had actual physical possession of the bag ('exh. P4(2)') in which the drug was found. Exhibit P4(2) was locked at the material time and the respondent had the key to it which, *prima facie*, meant that nothing could be placed into exh. P4(2) or taken out of it without her assent. This led to the strong inference that she had *mens rea* possession of the drug. Secondly, the respondent had appeared shocked when she was stopped by a police officer, which was evidence that was clearly relevant and admissible by virtue of s. 8 of the Evidence Act 1950. Lastly, the respondent had travelled from Kota Kinabalu to Penang and returned within a period of less than 24 hours; thus, it was unlikely that she went to Penang for leisure. These circumstances when taken together led to the irresistible inference that the respondent was trafficking in the drug in question. It was then for her to rebut this inference by offering a plausible explanation. (para 6)
- (2) Based on the evidence, the respondent was caught in the act of conveying a proscribed drug from one place to another. The quantity of the drug was much larger than was likely to be needed for her own consumption. In the absence of any plausible explanation by her, the irresistible inference was that she was transporting the drug for the purpose of trafficking in it. In other words, the prosecution had, at the close of its case, established a *prima facie* case of actual trafficking under s. 39B(1)(a) of the Act. (para 8)
- (3) The evidence of the chemist in the present instance met the requirements set out by Hashim Yeop A Sani CJ (Malaya) in *PP v. Lam San*. Hence, the issue which the learned judge had to decide was whether the chemist's evidence that the drug in this case was methamphetamine was so inherently incredible that no reasonable person could believe it to be true. Unfortunately, this was not the approach adopted by the learned trial judge. There was, hence, a misdirection by the learned judge of himself in respect of the chemist's evidence. (para 11)

- A (4) Further, even on the basis accepted by the learned judge that the prosecution had established that the weight of the drug in question was 2.332 grams, he ought nevertheless to have called for the defence. This was because the prosecution had established a *prima facie* case of actual trafficking and where
- B an accused is shown to be a trafficker under s. 39B(1)(a) of the Act, the weight of the drug he or she carries has no bearing whatsoever on his or her commission of the offence. (para 12)
- C (5) For the reasons already given, the learned judge's decision was incorrect as he failed to draw the proper inferences from the totality of the evidence. The learned judge ought to have called for the respondent's defence to the trafficking charge. (para 14)

D **Bahasa Malaysia** *translation of headnotes*

Ini adalah rayuan Pendakwa Raya terhadap keputusan membebas dan melepaskan responden, yang menghadapi tuduhan di bawah s. 39B(2) Akta Dadah Berbahaya 1952 ('Akta'), di akhir kes pendakwaan. Ketika membebas dan melepaskan responden, Mahkamah Tinggi memutuskan bahawa kes *prima facie* gagal dibuktikan oleh pendakwaan atas dua sebab. Pertama, ia gagal mengemukakan keterangan yang mencukupi bagi mencapai andaian bahawa responden tahu yang dadah berkenaan berada di dalam beg di mana ianya dijumpai, dan kedua, kerana keterangan ahli kimia tidak mencapai tahap yang dikehendaki oleh s. 37(g) Akta dan dengan itu tidak membuktikan berat dadah seperti yang dicatit dalam pertuduhan, sebaliknya hanya berat yang kurang dari itu, iaitu 2.332 gram.

G **Diputuskan (membenarkan rayuan dan mengembalikan kes ke mahkamah di bawah dengan arahan supaya memanggil pembelaan)**
Oleh Gopal Sri Ram HMR:

- H (1) Pertama, di atas fakta, responden mempunyai milikan sebenar beg ('eks. P4(2)') di mana dadah dijumpai. Eksibit P4(2) adalah berkunci pada waktu material dan responden memegang kuncinya yang bermakna, *prima facie*, tiada suatupun yang boleh dimasukkan ke dalamnya atau dikeluarkan darinya tanpa
- I kebenaran responden. Ini membawa kepada andaian kukuh

bahawa beliau mempunyai *mens rea* milikan dadah tersebut. Kedua, responden kelihatan terkejut apabila ditahan oleh seorang pegawai polis, yang mana ia adalah keterangan relevan dan boleh diterima-masuk berdasarkan peruntukan s. 8 Akta Keterangan 1950. Akhir sekali, responden telah membuat perjalanan dari Kota Kinabalu ke Penang dan pulang dalam masa 24 jam; oleh itu adalah tidak mungkin bahawa beliau pergi ke Penang untuk makan angin. Halkeadaan-halkeadaan yang wujud, dilihat secara menyeluruh, menunjuk kepada andaian tak tersangkal bahawa responden mengedar dadah berkenaan. Maka terpulang kepada responden untuk menyangkal andaian yang berbangkit dengan mengemukakan penjelasan yang munasabah.

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(2) Berdasarkan keterangan, responden ditangkap semasa sedang membawa dadah terlarang dari satu tempat ke tempat yang lain. Kuantiti dadah adalah jauh lebih banyak dari yang mungkin diperlukannya untuk kegunaan sendiri. Dengan ketiadaan penjelasan munasabah olehnya, andaian tak tersangkal yang berbangkit adalah bahawa beliau membawa dadah untuk tujuan mengedar. Dalam ertikata lain, di akhir kesnya, pendakwaan telah membuktikan suatu kes *prima facie* pengedaran sebenar di bawah s. 39B(1)(a) Akta.

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(3) Keterangan ahli kimia dalam kes semasa telah memenuhi kehendak-kehendak yang ditetapkan oleh Hashim Yeop A Sani CJ (Malaya) dalam *PP v. Lam San*. Oleh itu, isu yang harus ditangani oleh yang arif hakim adalah sama ada keterangan ahli kimia bahawa dadah di sini adalah methamphetamine merupakan sesuatu yang sangat tidak munasabah sehinggakan tidak ada orang yang berfikiran waras yang akan mempercayainya. Malangnya, ini bukanlah pendekatan yang diambil oleh yang arif hakim. Maka itu, terdapat salah arahan di sisi yang arif hakim berkaitan keterangan ahli kimia.

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(4) Selain itu, jikapun diterima asas pandangan yang arif hakim bahawa pendakwaan telah membuktikan bahawa berat dadah adalah 2.332 gram, beliau masih perlu untuk memanggil pembelaan. Ini kerana pendakwaan telah membuktikan kes *prima facie* pengedaran sebenar. Di mana seseorang tertuduh itu telah dibuktikan sebagai pengedar di bawah s. 39B(1)(a) Akta, maka berat dadah yang dibawa tidak lagi mempunyai pengaruh terhadap kesalahan yang dilakukan olehnya.

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- A (5) Atas alasan-alasan di atas, keputusan yang arif hakim adalah salah disebabkan beliau gagal membuat andaian-andaian yang wajar dari keseluruhan keterangan yang ada. Yang arif hakim sepatutnya memanggil responden untuk membela diri atas pertuduhan mengedar.

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Case(s) referred to:

Chan Pean Leon v. PP [1956] MLJ 237 (*refd*)

Chow Kok Keong v. PP [1998] 2 CLJ 469 FC (*refd*)

Lim Lye Huat Benny v. PP [1996] 1 SLR 253 (*refd*)

Low Kok Wai v. PP [1994] 1 SLR 676 (*refd*)

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Navarat Maykha v. PP [1995] 1 SLR 228 (*refd*)

Ong Ah Chuan v. PP [1981] 1 MLJ 64 (*fol*)

Poh Kay Keong v. PP [1996] 1 SLR 209 (*refd*)

PP v. Hla Win [1995] 2 SLR 424 (*refd*)

PP v. Lam San [1991] 3 CLJ 2410; [1991] 1 CLJ (Rep) 391 SC (*refd*)

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PP v. Wan Yue Kong & Ors [1995] 1 SLR 417 (*refd*)

Saad Ibrahim v. PP [1968] 1 MLJ 158 (*refd*)

Sukor v. PP [1995] 1 SLR 221 (*refd*)

Tan Ah Tee v. PP [1980] 1 MLJ 49 (*refd*)

Tay Kah Tiang v. PP [2001] 2 SLR 305 (*refd*)

Toh Ah Loh & Anor v. R [1949] MLJ 54 (*refd*)

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Wong Lam Noi v. PP [1998] 1 CLJ 37 CA (*refd*)

Yeo See How v. PP [1997] 2 SLR 390 (*refd*)

Legislation referred to:

Dangerous Drugs Act 1952, ss. 37(j), 39B(1)(a), (2)

Evidence Act 1950, s. 8

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For the appellant - Shamsul Sulaiman

For the respondent - Chau Chin Tang (VK Liew with him); M/s VK Liew & Partners

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[Appeal from High Court, Kota Kinabalu; Criminal Trial No: K45-01-2003]

Reported by Suresh Nathan

JUDGMENT

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Gopal Sri Ram JCA:

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[1] The respondent was charged with an offence under s. 39B(2) of the Dangerous Drugs Act 1952 ("the Act"). She was acquitted at the close of the prosecution's case. The Public Prosecutor appealed to us against the order of acquittal. We

allowed the appeal, set aside the acquittal and remitted the case to the High Court with a direction to call upon the appellant to make her defence to the charge. Because of the order we made it will be ill advised for us to make any comment on the evidence save that which is absolutely necessary. And we wish to make it crystal clear at the outset that nothing in this judgment is to be construed as an invitation by the High Court to convict the respondent at the close of the case for the defence. Here is a summary of the relevant facts.

[2] At about 1.30am on 20 September 2002, PW1, the head of the narcotic section of the police at Kota Kinabalu summoned 5 of his officers for a briefing. He had received information about a drug trafficker at the Kota Kinabalu International Airport. He briefed his officers. Then they all left for the airport. On arrival they took their positions. PW1 saw the respondent. He stopped her. He noticed that she looked shocked. The respondent was pushing a trolley. There were two bags on it: one on top of the other. PW 1 searched the bag that was on top exh. P4(2). It was locked. The respondent had the key. She handed it to PW1 who used it to open exh. P4(2). In it he found a package that contained a crystalline substance which on subsequent chemical examination was found to be 1,483 grammes of methamphetamine, a proscribed drug under the Act. The respondent was arrested. Among the other things that were recovered from the respondent were two sets of used airline tickets (exh. P11(1) and P11(2)), two used boarding passes (exh. P13(3) and P13(4)) and two baggage claim tags (exh. P12(1) and P12(2)). It was on the basis of this evidence that the prosecution invited the High Court to call for the defence, an invitation that was declined by the trial judge.

[3] In acquitting and discharging the respondent the High Court held that the prosecution had not proved a *prima facie* case on two grounds. First, because it had failed to adduce sufficient evidence from which an inference that the respondent knew that the drug in question was in the box in which it was found. Second, because the chemist's evidence fell short of the requirements of s. 37(j) of the Act and hence did not go to prove the weight of the drug as stated in the charge but only the lesser weight of 2.332 grammes.

A [4] This is what he said in respect of his first ground:

B The fact that the Accused took a round trip suggests that the
C Accused had gone to Penang to pick up and check in the baggage
D which contained the box that was holding the drug. But it still
E begs the question of whether she knew what was inside the box.
There should be evidence of whom she met, of how she came
by the baggage and how she came to check in the baggage. She
was caught with the bag a few hours after she has checked in
which means that it is not difficult, especially when she had
travelled in business class, for the ground staff to give evidence
as to the circumstances pertaining the checking in of the baggage.
The evidence may give some indication as to the state of mind
of the Accused, that is, whether she knew there was drug in it.
The security officer who scanned the baggage should also have
been called to give evidence as to whether the drug could be
detected and whether it was detected. If such drug can show up
after it goes through the X-ray or scanning machine, then it is
inherently incredible that someone, knowing that there was drug
in the baggage, would still check in the baggage knowing that it
will be detected. The more probable inference would point to the
person not knowing that there was drug in the baggage. All these
evidence should be forthcoming if only the investigation officer
had followed the instruction of the Attorney-General Chambers to
carry out further investigation. The investigation officer said that
he did not carry out the further investigation because he did not
believe what the Accused had said.

F [5] With respect, we are of the view that the approach adopted
by the learned judge casts too heavy a burden on those entrusted
with law enforcement. It is of course well settled that *mens rea*
possession of the drug (not merely physical possession) must be
proved. The authorities on the point are legion. *Toh Ah Loh &*
G *Anor v. R* [1949] MLJ 54, *Chan Pean Leon v. Public Prosecutor*
[1956] MLJ 237, *Sukor v. Public Prosecutor* [1995] 1 SLR 221,
Low Kok Wai v. Public Prosecutor [1994] 1 SLR 676, *Public*
Prosecutor v. Wan Yue Kong & Ors [1995] 1 SLR 417, *Lim Lye*
Huat Benny v. Public Prosecutor [1996] 1 SLR 253, *Poh Kay Keong*
H *v. Public Prosecutor* [1996] 1 SLR 209 and *Yeo See How v. Public*
Prosecutor [1997] 2 SLR 390. In *Saad Ibrahim v. Public Prosecutor*
[1968] 1 MLJ 158 Yong J described *mens rea* possession as
follows:

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In my opinion mere possession is one thing and possession with *mens rea* is another. Possession which incriminates must have certain characteristics. The possessor must be aware of his possession, must know the nature of the thing possessed and must have the power of disposal over it. Without these characteristics possession raises no presumption of *mens rea*. Without *mens rea* possession cannot be criminal except in certain cases created by statute, which is not applicable in this case.

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But knowledge like any other state of mind is a fact that is to be inferred from proved or admitted circumstances of a particular case. See, *Wong Lam Noi v. Public Prosecutor* [1998] 1 CLJ 37; *Tay Kah Tiang v. Public Prosecutor* [2001] 2 SLR 305.

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[6] Look at the facts here. First you have the actual physical possession by the respondent of the bag (exh. P4(2)) in which the drug was found. Exhibit P4(2) was locked at the material time. She had the key to exh. P4(2). *Prima facie*, therefore, nothing could be placed into exh. P4(2) or taken out of it without her assent. This leads to the strong inference that she had *mens rea* possession of the drug. See, *Tan Ah Tee v. Public Prosecutor* [1980] 1 MLJ 49. Second, you have the demeanour of the respondent when she was stopped by PW1. She appeared shocked. This is evidence which is clearly relevant and admissible by virtue of s. 8 of the Evidence Act 1950. Lastly, you have the evidence of the respondent's movements. She travelled from Kota Kinabalu to Penang and returned. It was all within a period of less than 24 hours. So it is unlikely that she went to Penang for leisure. Only she knows the true purpose of her travel. These circumstances when taken together lead to the irresistible inference that the respondent was trafficking in the drug in question. It is then for her to rebut this inference by offering a plausible explanation.

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[7] In *Ong Ah Chuan v. Public Prosecutor* [1981] 1 MLJ 64, Lord Diplock made certain observations in relation to the Misuse of Drugs Act 1973 of Singapore which have been applied by our courts. See, *Chow Kok Keong v. Public Prosecutor* [1998] 2 CLJ 469. This is what Lord Diplock said:

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So, simply to transport from one place to another a quantity of a controlled drug intended for one's own consumption, if unauthorised by the Act or Regulations, involves an offence of having the drug in one's possession under section 6 but does not amount to the offence of trafficking under section 3. It is

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- A** otherwise, however, if the transporter's purpose, whether it is achieved or not, is to part with possession of the drug or any portion of it to some other person whether already known to him or a potential purchaser whom he hopes to find. This is the consequence of section 10 of the Drugs Act and section 3(c) (which covers the same ground in part). These provisions make the question whether the transporter of the drugs achieves that purpose irrelevant to his guilt of the offence of trafficking under section 3; since they provide that a person who does any act preparatory to, or in furtherance of, or for the purpose of the commission of the offence of trafficking in a controlled drug, shall be guilty of the substantive offence of trafficking and liable on conviction to the penalty provided for it under section 29 and the Second Schedule.

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- D** This is a very wide description of acts that may be treated as equivalent to the substantive offence of trafficking; nevertheless, in their Lordships' view, it is clear from the structure of the Drugs Act and the distinction drawn between the offence of having a controlled drug in one's possession and the offence of trafficking in it, that mere possession of itself is not to be treated as an act preparatory to or in furtherance of or for the purpose of trafficking so as to permit the conviction of the possessor of the substantive offence. To bring the provisions of sections 10 and 3(c) into operation some further step or overt act by the accused is needed, directed to transferring possession of the drug to some other person; and it is a consequence of the clandestine nature of the drug trade and the means adopted for the detection of those engaged in it, that the further step that the prosecution is most likely to be able to prove in evidence is the act of the accused in transporting the drug to some place where he intends to deliver it to someone else, whether it be the actual consumer or a distributor or another dealer.

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- F**
- G** *Proof of the purpose for which an act is done, where such purpose is a necessary ingredient of the offence with which an accused is charged, presents a problem with which criminal courts are very familiar. Generally, in the absence of an express admission by the accused, the purpose with which he did an act is a matter of inference from what he did. Thus, in the case of an accused caught in the act of conveying from one place to another controlled drugs in a quantity much larger than is likely to be needed for his own consumption the inference that he was transporting them for the purpose of trafficking in them would, in the absence of any plausible explanation by him, be irresistible – even if there were no statutory presumption such as is contained in section 15 of the Drugs Act.*
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As a matter of common sense the larger the quantity of drugs involved the stronger the inference that they were not intended for the personal consumption of the person carrying them, and the more convincing the evidence needed to rebut it. All that section 15 does is to lay down the minimum quantity of each of the five drugs with which it deals at which the inference arises from the quantity involved alone that they were being transported for the purpose of transferring possession of them to another person and not solely for the transporter's own consumption. There may be other facts which justify the inference even where the quantity of drugs involved is lower than the minimum which attracts the statutory presumption under section 15. In the instant cases, however, the quantities involved were respectively one hundred times and six hundred times the statutory minimum.

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Whether the quantities involved be large or small, however, the inference is always rebuttable. The accused himself best knows why he was conveying the drugs from one place to another and, if he can satisfy the court, upon the balance of probabilities only, that they were destined for his own consumption he is entitled to be acquitted of the offence of trafficking under section 3. (emphasis added.)

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[8] Apply that here. Based on the evidence already discussed, the respondent was caught in the act of conveying a proscribed drug from one place to another. The quantity of the drug is much larger than is likely to be needed for her own consumption. In the absence of any plausible explanation by her, the irresistible inference is that she was transporting the drug for the purpose of trafficking in it. In other words, the prosecution had, at the close of its case, established a *prima facie* case of actual trafficking under s. 39B(1)(a) of the Act.

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[9] We now turn to the second ground relied on by the learned trial judge. This is what he said about it:

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The chemist had analysed less than 2%. Therefore, at most the prosecution had established that 2.332 grammes of the substance were methamphetamine. On this ground alone, the prosecution has failed to establish a *prima facie* case.

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[10] With respect, we are unable to agree with the learned judge. And we do not think it necessary to do more than to quote from the judgment of Hashim Yeop A Sani CJ (Malaya) in *Public Prosecutor v. Lam San* [1991] 3 CLJ 2410; [1991] 1 CLJ (Rep) 391:

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A Looking at the evidence of the chemist in its totality, we found it difficult to accept the doubt of the learned judge at the close of the prosecution case to be a doubt arrived at on a rational basis. PW5 was a highly qualified chemist who had served the Department of Chemistry for 22 years and had testified as an expert witness in many court cases.

B As to how a trial court should approach the evidence of a chemist, we wish to advert to the judgment of this court in *Munusamy v. PP* [1987] 1 MLJ 492 where in a passage at p 496F, Mohamed Azmi SCJ on behalf of the court put in focus the function of the chemist in a trial of this nature:

C We are therefore of the view, that in this type of cases where the opinion of the chemist is confined only to the elementary nature and identity of substance, the court is entitled to accept the opinion of the expert on its face value, unless it is inherently incredible or the defence calls evidence in rebuttal by another expert to contradict the opinion. So long as some credible evidence is given by the chemist to support his opinion, there is no necessity for him to go into details of what he did in the laboratory, step by step.

D Two things are implicit in that passage. First, unless the evidence is so inherently incredible that no reasonable person can believe it to be true, it should be accepted as *prima facie* evidence. Secondly, so long as the evidence is credible, there is no necessity for the chemist to show in detail what he did in his laboratory.

E In our view, the evidence of the chemist in this case was more than sufficient as basis to call for the defence, granted that all the other ingredients of the offence had been successfully proved.

F The evidence of the chemist must be looked at in its totality. Seen in its totality, the evidence of the chemist in this case is not sketchy at all. There is no need for him to say what instrument he used for the purpose of the analysis or that the instrument was in good working condition as we have to assume until the contrary is shown that he had the proper instrument to carry out his work. In this case he had even gone to the extent of giving a margin of error and had given the benefit of the doubt to the respondent.

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[11] The evidence of the chemist in the present instance meets the requirements set out by the learned Chief Justice of Malaya in the above quoted passage. Hence, the issue which the learned judge had to decide is whether the chemist's evidence that the drug in this case was methamphetamine was so inherently incredible that no reasonable person could believe it to be true. Unfortunately this is not the approach adopted by the learned trial judge. There is hence a misdirection by the learned judge of himself in respect of the chemist's evidence.

[12] Further, even on the basis accepted by the learned judge that the prosecution had established that the weight of the drug in question was 2.332 grammes, he ought nevertheless to have called for the defence. This is because, as we have already said, the prosecution had here established a *prima facie* case of actual trafficking. And where an accused is shown to be a trafficker under s. 39B(1)(a) of the Act, the weight of the drug he or she carries has no bearing whatsoever on his or her commission of the offence.

[13] Before we conclude, we think it useful to refer to two decided cases fairly similar to the present. The first is *Navarat Maykha v. Public Prosecutor* [1995] 1 SLR 228. There, the accused, a Thai national, arrived at Changi Airport from Bangkok. She was stopped by a customs officer in the arrival hall. Upon a thorough examination of the appellant's bag, a white substance was discovered in the inside-lining of the bag. This was later analyzed to be diamorphine. The accused was charged, tried and convicted for having imported not less than 3,185.2g of diamorphine into Singapore. The trial judge called for the defence and after hearing the defence convicted her. An appeal to the Court of Appeal failed. The second is *Public Prosecutor v. Hla Win* [1995] 2 SLR 424. There, the accused arrived at the Changi Airport on board a flight from Hatyai, Thailand. He was spotted by a Customs Officer walking with a trolley towards the customs clearance gates. On the trolley, there were a brown leather bag and a small white paper bag. The Customs Officer observed the accused to be behaving in a suspicious manner. The leather bag was searched. The inner linings on both sides of the bag were bulging. The lining was slit open and a quantity of white powder was found which on chemical examination was found to be

- A** heroin. The accused was tried for trafficking. The trial judge called for his defence. The accused gave evidence that he had no knowledge of the drug. After hearing his story the trial judge acquitted him. An appeal was dismissed. But it is to be noted that the report of the case shows a detailed examination of the
- B** accused's defence.

- [14]** For the reasons already given, we were unable to agree with the learned judge's decision as he failed to draw the proper inferences from the totality of the evidence. In our judgment, the
- C** learned judge ought to have called for the respondent's defence to the trafficking charge. The appeal was accordingly allowed and the case remitted to the court below with a direction to call for the defence.

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